IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1080 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

DINESHKUMAR CHIMANLAL SHUKLA

Versus

INDRAVAN BABULAL GANDHI

Appearance:

1. Criminal Appeal No. 1080 of 1992

MR PRANAV G DESAI for Petitioner No. 1

MR BS PATEL for Respondent No. 1

NOTICE SERVED for Respondent No. 2-3

MR KC SHAH, APP for Respondent No.4.

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 19/10/2001

JUDGEMENT

1. The appellant - Dineshkumar Chimanlal Shukla, Food Inspector, then attached to the Municipal

Corporation, Vadodara and complainant of Criminal Case No. 1063 of 1982 of the Court of the Judicial Magistrate First Class, Municipal Court, Vadodara has preferred this appeal under Section 378 (4) of the Code of Criminal Procedure (for short 'Cr.P.C.') challenging the judgment and order of acquittal passed by the Ld. Judicial Magistrate First Class, Municipal Court, Vadodara dated 25/1/1991 acquitting all the three original accused i.e. present respondents nos. 1 to 3 of the offence punishable under Section 7 read with section 16 of the Prevention of Food Adulteration Act (hereinafter referred to as 'the Act').

2. The prosecution case is that at the relevant time the appellant was discharging duty as Food Inspector in the city area of Vadodara Municipal Corporation. He was appointed as Food Inspector by the State of Gujarat and his appointment was published in the Government Gazette, extract whereof has been produced on record at Exh. 51. On 2/12/1989 around 10.00 a.m. the appellant was on his usual round and in the course of the same he visited a grocery shop owned by respondent no. 1 Indravadan Babulal Gandhi, situated in Dandiya Bazar area in the city of Baroda. He thereafter summoned a panch witness and he noted down the address, age, occupation, etc. of the panch in the panchnama. He also recorded the name of owner of the shop, address, etc. in the panchnama. The appellant thereafter prepared a written notice expressing his intention to obtain the sample of grinded chilli powder. The said notice was signed by the appellant as well as the panch. He then gave the said notice to respondent no. 1 and made him known his intention purchase sample of chilli powder for the purpose of analysis. In the shop there was wooden staircase which was turned into wooden stand with shelves and it was being used for keeping grains, serial, etc. stored in open square tins for sale. There was money box kept in the shop and also a wooden seat. On the wall of the shop there was fixed open wooden cupboard and on the shelves of the cupboard tins containing chilli powder, turmeric powder, sugar granules. and other items were kept. There was another separate shelf fixed on the wall on which there was a square tin having a round shaped lid over it and painted with blue colour was placed. On the front side of said tin in white colour letters, words "chilli powder" were written. The said tin could contain about 10 Kgs. of chilli powder and in fact it contained 10 Kgs. of chili powder on that day. A small vessel of steel was kept by its side for taking out chilli powder from the tin for sale. Appellant after expressing his intention to have a sample of chilli powder, brought out

brown paper which was empty, clean and moistureless, placed it on the scale kept in the shop and thereafter balanced the scale equally by placing necessary weight on the opposite scale. The appellant thereafter with the aid of empty, clean and moistureless steel spoon brought out 600 Gms. of chilli powder and after weighing the same, he purchased it for the purpose of analysis. Requisite written notice was also given to the vendor respondent no. 1, which was duly signed by the appellant, respondent no. 1 and the panch and which already contained signature of Local Health Authority. The said notice has been produced by the appellant at Exh. 74 on record of the case. The appellant thereafter paid the market price for purchase of chilli powder in the presence of panch and obtained receipt of the same and which was also signed by the appellant and panch, which is at Exh. 75 on record. A cash memo was also passed on by respondent no. 1 to the appellant duly signed by him which is at Exh. 76. Upon inquiry being made by the appellant, respondent no. 1 informed him that he had purchased the chilli powder from Vijay Masala Bhandar, Pani Gate, Haran Khana Road, Vadodara and also produced bill indicating such purchase. The appellant noted down necessary details of the said bill in the panchnama and made an endorsement at the back of the bill, which was then signed by panch and appellant and returned the same to respondent no.1. The appellant thereafter wrote notice for despatching it to the address shown in the said bill. Office copy whereof is at Exh. 77. The appellant also took out 3 glass bottles having tin lids. The said bottles were empty, clean and moistureless and the same were shown to the panch and respondent no. 1 for ascertaining that the bottles were clean, empty and moistureless. The said bottles were then duly weighed on the scale. The appellant thereafter with the aid of steel spoon filled each bottle with 200 Grams chilli powder after dividing it into 3 equal parts and the mouths of the bottles were tightly closed with the lids. The appellant thereafter applied two seals of Inspector, Vadodara Municipal Corporation on each bottle in such a manner that part of the same covered the tin lid's border as well as part of it covered some of the glass portion of the bottle. On each bottle printed labels in which certain details like serial no. of the sample, name of the despatcher and his address and the date, description of the item, namely chilli powder, addition of preservative nil, etc. were filled in and the labels were pasted on each bottle by means of gum. Each bottle was thereafter wrapped in brown paper and the ends of brown paper were folded inwardly and both the ends i.e. at the mouth of the bottle as well as at the

bottom of the bottle were fixed with gum. Even the openings near the joints of the brown paper on the body of the bottles were closed by means of gum. On the brown paper of each bottle necessary details as required by law were noted down. On the brown paper appellant pasted a slip containing details regarding name of the Food Inspector i.e. appellant, date, signature of the Food Inspector, etc. The appellant applied 3 paper slips, one each on three bottles and pasted them on the bottle in such a manner that one end of the slip came on the top of the mouth of the bottle, whereas the other end after extending upto the bottom and after going round the bottle again came on lid from the otherside of the bottle. The said slip was pasted by means of gum. On that slip, signatures of Food Inspector, panch and respondent no. 1 were made. The brown paper containing the bottle was tied with crosswise knots and seals were applied on each of such knots at different places i.e. on the top and on the two sides and at the bottom of the bottle. The Food Inspector thereafter noted down the details of the same in the form of panchnama in the presence of panch and respondent no. 1 and the same was read over to the panch and respondent no.1. The Food Inspector thereafter placed one bottle in the cover and on the outer side of the cover name of the Public Analyst was printed as receiver and name of the Food Inspector was printed as sender. In the said cover a memorandum was placed and cover was thereafter pasted with gum and tied with the twine. On the knot of the twine a seal of Inspector, Vadodara Municipal Corporation was applied. Necessary entry of the despatch was made in the despatch register, copy of the relevant extract whereof has been produced at Exh. 79. The appellant thereafter placed copy of the memorandum as well as seal impression in a different cover and despatched the same to the Public Analyst. Necessary entry thereof was made in the despatch register. The remaining two bottles were also sent to the Local Health Authority. The seal impression as well as copy of the memorandum were sent separately to the Local Health Authority. Subsequently the Public Analyst after carrying out the analysis of the sample in question, forwarded the report of the analysis to the appellant. The report is produced and is taken on record of the case at Exh. 82. Since the report of the analysis revealed that the sample did not conform to the standard prescribed for chilli powder in the provisions of the Act as well as the Prevention of Food Adulteration Rules (hereinafter referred to as 'the Rules'), the same was found to be adulterated. The appellant, therefore, forwarded report as well as other relevant papers to the Local health Authority for obtaining the necessary

consent under Section 20 of the Act for filing complaint against respondent no.1. In due course appellant received consent from the Local Health Authority, which is produced on record at Exh. 84. On receipt of the consent from Local Health Authority, the appellant filed complaint against respondents for an offence u/S. 7 read with Section 16 of the Act.

After filing the complaint respondent no. 1 was served with the notice alongwith copy of the report under the provisions of Section 13(2) of the Act. Respondent no. 1 did not avail of right conferred upon him vide Section 13(2) of the Act for getting the sample analysed by the Director of Central Food Laboratory.

As respondent no. 1 had informed the appellant that he had purchased chilli powder from respondent no. 2, who in turn had purchased it from its manufacturer respondent no.3, respondent no. 1 took the defence of warranty against respondent no. 2 and respondent no. 2 claimed warranty against respondent no.3. Respondent nos. 2 and 3 came to be joined as co-accused i.e. original accused nos. 2 and 3 vide order at Exh.9 made in accordance with the provisions of section 20 (A) of the Act.

3. At the trial necessary charge was framed against the respondents and respondents denied the same and claimed to be tried. In his further statement recorded u/S. 313 of Cr.P.C. no definite defence was raised by respondent no. 1 nor did he examine himself or any other person to establish his defence of warranty.

4. The Ld. Magistrate while appreciating the evidence on record came to the conclusion that respondent no. 1 was not able to show in support of his defence of warranty claimed against respondent no. 2 that he had purchased the offending food article from respondent no. 2 and at the time of collection of the sample the said food article was kept in the same condition as it was at the time of purchasing it from respondent no.2. Hence, case against respondent no. 2 was not established. The Ld. Magistrate also held that respondent no. 2 had not stepped into witness box and had not produced any purchase bill to show that the chilli powder in question was purchased from respondent no. 3 by respondent no. 2 and hence no case was established against respondent no. 3. Further the Ld. Magistrate while discussing the evidence with regard to consent u/S. 20 of the Act found that it did not contain certain details like the code no. and serial no. of the Local Health Authority, a

statement to the effect that consent is being given for lodging complaint in the public interest, etc. Moreover, certain details like the name of accused, etc. were filled in by hand. Hence, it was not a valid consent in view of decision rendered by this Court in the case of Ramanbhai Shivabhai Prajapati v/s. State of Gujarat reported in 1990 Criminal Law Report (Gujarat) at page 496. The said decision is rendered on the question of validity of consent u/S. 20 of the Act. By said decision, this Court held that the consent given by the Local Health Authority in that case was not legal and valid in as much as in the printed form only certain details were filled in regarding the name of the accused, section under which the accused is to be prosecuted, etc. and no reasons justifying the sanction given in the public interest were stated. According to the said decision, since the Local Health Authority did not specify the reasons satisfying it that the case was fit for launching prosecution against the accused it was not a valid sanction in the eye of law. Moreover, the Ld. Magistrate also relied on the decision in the case of S.D. Nagdev v/s. Sudhakar Raghunath Burge reported in 1989 (2) F.A.C. page 269, in which it was held that since the Local Health Authority of that case did not record the reasons showing application of its mind to the aspect that it was necessary to launch prosecution against accused of that case in public interest, the consent was not legal and in accordance with provisions of section 20 of the Act and, therefore, the prosecution failed to establish case against the accused.

5. The Ld. Magistrate after considering aforesaid two cases held that since the consent in this case did not specify any reason nor the Local Health Authority was examined at the time of trial, the consent was bad in law and the accused i.e. respondents nos. 1, 2 and 3 were entitled to have an order of acquittal in their favour. That the Ld. Magistrate on the sole ground acquitted the respondents nos. 1 to 3.

6. I have heard counsel for both sides at length and I have also perused record of the case in detail. By now it is a well settled principle of law that while dealing with appeal against order of acquittal High Court can reappreciate the evidence afresh and reach to its own conclusions.

7. The Ld. APP Mr. K.C. Shah submitted that in view of the subsequent decision rendered by this Court in the case of Gangadhar Y. Ramekar v/s. M.B. Shah, reported in 1999 (2) G.L.R. at page 1105, placing

reliance on the decision of the Hon'ble the Supreme Court, this Court has ruled that the Local Health Authority is not required to assign any reasons for forming the opinion that it was a fit case for granting consent u/S. 20 of the Act. As against that Mr. B.S. Patel contended that the judgment delivered by the Ld. Magistrate was in accordance with the case law as it stood then and, therefore, there was no need to disturb the order of acquittal passed by the Ld. Magistrate.

8. The decision cited by Mr. K.C. Shah, Ld. APP clearly shows that the ground on which the order of acquittal has been passed by the Ld. Magistrate is no longer a good law. While considering the question regarding validity of the consent, this Court has in a subsequent decision in the case of Gangadhar Ramekar (supra) relied on the decision rendered by the Apex Court and has observed as follows :-

"Considering the question of consent, as envisaged under Sec. 20 of the Act, the consent is produced at Exh. 48 on record of the trial Court. There is a specific averment that the consent was given after going through Analysis Report of the Public Analyst and other pertinent papers and documents and the nature of the offence committed by the alleged offenders. It, therefore, cannot be said that the consent was given without application of mind. If the decision of the Hon'ble Supreme Court in the case of Suresh S. Rajput v. Bhartiben P. Soni, 1996 (7) SCC 199 is seen, the same question was involved. In that case, the Hon'ble Supreme Court has reproduced the text of the consent letter in paragraph 6. If that is read in comparison to Ex. 48, it can be found that it is ad verbatim the same, except the name of the accused. Inspite of the said consent letter, it has been observed that the said sanction was in accordance with law, although it was a cyclostyled one and, therefore, that question is now set at rest by the said decision and it is, therefore, hereby held that the verdict of the learned Magistrate that the sanction was not valid was an error."

Considering the consent on record of the present case, it becomes clear that it is on the same line and it is squarely covered by later decision of this Court.

In light of the decision of the Apex Court as

well as this Court, the decision rendered in the case of Ramanbhai Shivabhai Prajapati (supra) is of no help to respondents nos. 1 to 3. The order of acquittal passed by the Ld. Magistrate is, therefore, glaringly erroneous on that count.

9. I am now required to see afresh whether prosecution has been successful enough to bring home charge against the respondents.

10. The evidence of appellant shows that though in the examination-in-chief he stated that he had collected the sample in three empty, clean and moistureless bottles, but in the cross-examination by defence he has stated that the said bottles were given to him by the Department. He admitted that he did not know when the bottles were purchased. He also admitted that after purchase how and in what condition they had remained in the custody of the Clerk. He also admitted that there was no register maintained to show when the bottles were purchased last. He, however, stated that he had got the bottles cleaned under his supervision, but on which day the same were got cleaned, he could be able to say only after verifying the record. The said record was lying in his office. He also stated in cross-examination that no such record was produced in this case. He further stated that peon Kalgude had cleaned the bottles and if need be, he would examine him in this case. He further stated that no note of cleaning apparatus for collecting the sample is being made. He denied the suggestion of the defence that the apparatus for collecting and the bottles were not clean and moistureless.

The evidence of this witness is, therefore, not at all satisfactory on the point of the bottles being clean and moistureless. It is well settled by now that the prosecution in the cases under the Food Adulteration Act has to provide satisfactory proof with regard to who cleaned the apparatus and/or the bottles in which the sample of offending food article was collected and when and whether at the time of collection the bottles were clean and moistureless. In the instant case, the prosecution has not been able to establish these facts beyond any reasonable doubt. As could be seen from the evidence of Food Inspector, he has no knowledge when the bottles were cleaned last, but he himself has not cleaned the bottles and the apparatus meant for collecting samples, that his peon Kalgude had cleaned them under his supervision, but again he did not remember when they were cleaned last, that no register or record was being maintained to show the date and time on which the

containers were cleaned and by whom, that though he showed his willingness to examine peon Kalgude, he did not examine him at the trial nor any record was produced to show that who cleaned the bottles and when. This Court in the case of Gangadhar Y. Ramekar (supra) relying on earlier decision of this Court, has held as follows :-

"In this regard, it may be noted that the evidence of the complainant, at Ex. 31, if perused, indicates that he had no personal knowledge about the cleaning of bottles in which the samples were taken. He did not have any information or knowledge as to who cleaned those bottles and when. It would, therefore, be a matter of doubt whether the bottles were really cleaned or not. When the bottles were shown to the Panch witness, it transpires from the evidence that the cork was closed and, therefore, in light of the decision of this High Court in the acse of Sudhirchandra B. Joshi v. Arvindkumar Naranbhai Patel & Ors., Criminal Appeal No. 1013 of 1988, delivered on 12th July, 1995, the requirements of Rule 14 cannot be said to have been complied with. In the said decision, it was observed that the person who cleaned the bottles was not examined and there was satisfactory evidence to show that the mandatory requirements were not complied with and, therefore, the benefit was given to the accused persons relying upon the decision of this High Court in the case of M.B. Risaldar v. Radheshyam as reported in 1980 (2) GLR 136. The facts of the present case are identical as can be seen from the deposition of the complainant."

11. In light of this decision, it can safely be concluded that the prosecution had failed to establish the aspect of the bottles containing samples being clean and moistureless at the time of collection of samples and, therefore, the respondents deserve to be given benefit of doubt and the prosecution has to fail.

12. Before concluding this judgment, it is pertinent to note that respondent no. 1 during pendency of the appeal expired on 2/11/1994 and Mr. B.S Patel has placed on record a xerox copy of the death certificate issued by Vadodara Municipal Corporation. Mr. K.C. Shah does not

dispute this fact. This appeal, therefore, abates in respect of respondent no. 1 by virtue of provisions of section 394(1) of the Cr.P.C.

13. In view of the aforesaid discussion, though the ground on which the order of acquittal passed by the Ld. Magistrate is found to be erroneous, in light of the fact that prosecution had failed to prove that the bottles in which samples were collected were clean and moistureless at the time of collection of the samples, benefit of doubt is required to be given to the respondents and the order of acquittal is required to be maintained. In the result, the appeal fails and it is hereby ordered to be dismissed.

[AKSHAY H. MEHTA, J.]

* Pansala.